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## FISCAL IMPACT REPORT



SPONSOR: Burpo DATE TYPED: 01/25/02 HB 37/aHTRC

SHORT TITLE: Taxation Of Certain Florist Sales SB \_\_\_\_\_

ANALYST: Neel

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	FY03			
		\$0.1 Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC files  
Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amended HB37 by eliminating the deduction for gross receipt taxes for receipts received by a New Mexico florist from a order placed out of state and delivered by a New Mexico florist. There will be a minimal positive impact to the State's General Fund.

#### Synopsis of Original Bill

House Bill 37 amends sections of the Gross Receipts and Compensating Tax Act to change the definition of Gross Receipts Tax to include florist sales conducted in New Mexico that are to be filled and delivered outside of New Mexico by out-of-state florist. HB 37 explicitly excludes from Gross Receipts monies received by a New Mexico florist from the sale of flowers, plants, etc. where the sale is made pursuant to an order placed outside of New Mexico for delivery in New Mexico by a New Mexico florist.

Additionally, HB 37 provides clarification to those parties excluded under the definition of "engaging in business." Third party call centers that provide services to "non-New Mexico customers are excluded from the definition of "engaging in business."

This provision was passed by the Legislature during the 2001 session, and signed by the Governor, but did not become law because the same section of statute was amended by another bill that was signed later. The measure is included in the current bill to avoid the same problem, since other sections of this bill amend the same section of statute.

### **FISCAL IMPLICATIONS**

TRD states that because HB 37 reverses the origin/destination taxability, there will be a revenue gain from “outbound” sales to offset the revenue loss on “inbound” sales. Furthermore TRD states that there is minimal fiscal impact associated with the call center exception.

Additionally, TRD notes that the 1997 Economic Census reports 138 retail florists employing 608 employees and \$5.671M in payroll and \$27.582 million in retail sales. An unknown fraction of this business is derived from interstate sales.

### **TECHNICAL ISSUES**

TRD’s legal council notes the following technical issues:

- The amendment to Section 7-9-55 NMSA 1978 is not necessary since the definition of gross receipts in Section 7-9-3(F) is amended to explicitly include amounts received for outbound floral sales; and
- Section 7-9-55 currently says that interstate sales are not subject to tax “*to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.*” If Section 7-9-55 currently implicitly prohibits the taxation of outbound floral sales as unconstitutional, it would still be unconstitutional even if Sections 7-9-3 and 7-9-55 were amended

SN/njw:ar